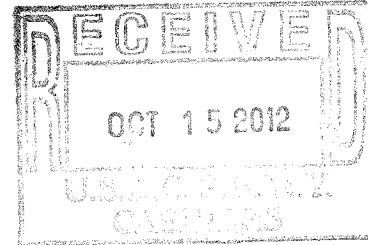


JUDGE STANTON

12 CV 7694

Jay P. Lefkowitz
John P. Del Monaco
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
lefkowitz@kirkland.com
john.delmonaco@kirkland.com

Douglas J. Kurtenbach (Pro hac vice to be filed)
Nader R. Boulos (Pro hac vice to be filed)
KIRKLAND & ELLIS LLP
300 North LaSalle Drive
Chicago, IL 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
douglas.kurtenbach@kirkland.com
nader.boulos@kirkland.com



**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

FERA PHARMACEUTICALS, LLC,

Plaintiffs,

- against -

AKORN, INC.; TIMOTHY DICK; JOSEPH
BONACCORSI; MARK SILVERBERG;
SEAN BRYNJELSEN; and MICHAEL
STEHN,

Defendants.

Case No.:

ECF Case

NOTICE OF REMOVAL

Defendants Akorn, Inc., Timothy Dick, Joseph Bonaccorsi, Mark Silverberg, Sean Brynjelsen, and Michael Stehn (collectively, "Defendants"), by and through their undersigned

counsel, hereby provide notice pursuant to 28 U.S.C. § 1446 of the removal of the above-captioned case from the Supreme Court of the State of New York, County of New York to the United States District Court for the Southern District of New York.¹ The Court has subject matter jurisdiction, and the matter is therefore removable, pursuant to 28 U.S.C. §§ 1332 and 1441 because complete diversity exists in this action. In support of removal, Defendants state as follows:

BACKGROUND

1. On September 12, 2012, Plaintiff commenced this action by filing a complaint (the “Complaint”) in the Supreme Court of the State of New York in the County of New York, Index No. 653184/2012 (the “State Court Action”).

2. On September 14, 2012, Plaintiff served each Defendant with a copy of the Summons and Complaint. The Summons and Complaint are attached hereto as Exhibit A. Defendants filed no pleadings or papers in the State Court Action, and the time for Defendants to answer, move to dismiss, or otherwise respond to the Complaint has not yet expired.

3. Under 28 U.S.C. § 1446(b), this Notice of Removal must be filed within 30 days of service of the Complaint on Defendants, so long as the basis for removal is evident from the allegations in the Complaint. Because Defendants were served on September 14, 2012, this Notice of Removal is timely.

¹ In removing this action, Defendants preserve any and all defenses. *See, e.g., Cantor Fitzgerald, L.P. v. Peaslee*, 88 F.3d 152, 157 n.4 (2d Cir. 1996) (“Removal does not waive any Rule 12(b) defenses,” including “defense of lack of personal jurisdiction.”); *Gay v. Carlson*, No. 89 Civ. 4757 (KMW), 1991 WL 190584, at *5 (S.D.N.Y. Sept. 17, 1991) (“[M]erely by removing a case from state to federal court a party does not waive any of its defenses under Rule 12(b), including a motion to dismiss for improper service.”).

4. Concurrent with the filing of this Notice, Defendants are serving this Notice on Plaintiffs' counsel and filing a copy of the Notice with the Clerk of the Supreme Court of the State of New York, New York County.

5. No previous application has been made for this or similar relief. This Notice of Removal is signed pursuant to Federal Rule of Civil Procedure 11.

6. The United States District Court for the Southern District of New York embraces the county in which the State Court Action is now pending. Venue is therefore proper for this Notice of Removal under 28 U.S.C. §§ 112(b) and 1446(a).

JURISDICTION

7. This Court has jurisdiction over this case under 28 U.S.C. § 1332. This case is therefore removable under 28 U.S.C. § 1441.

8. Pursuant to 28 U.S.C. § 1332 this is a civil action in which the amount in controversy exceeds \$75,000 and is between citizens of different states. Further, pursuant to 28 U.S.C. § 1441(b)(2), none of the defendants is a citizen of the State in which the State Court Action was commenced.

9. Plaintiff Fera Pharmaceuticals, LLC is a limited liability company licensed in New York and having a principal place of business in New York, both presently and at the time the State Court Action was commenced. (Compl. ¶ 7.) Fera Pharmaceuticals, LLC has two members, Frank DellaFera and Janet DellaFera. Upon information and belief, Frank and Janet DellaFera reside in Locust Valley, New York 11560, both presently and at the time the State Court Action was commenced. Thus, Fera Pharmaceuticals, LLC, whose members are domiciliaries of New York, is a citizen of New York for purposes of diversity jurisdiction. *See Handelsman v. Bedford Vill. Assocs. Ltd. P'ship*, 213 F.3d 48, 51-52 (2d Cir. 2000) (“[F]or

purposes of diversity jurisdiction, a limited liability company has the citizenship of its membership.”).

10. Defendant Akorn, Inc. is a Louisiana corporation with its principal place of business in Illinois, both presently and at the time the State Court Action was commenced. (Compl. ¶ 8.)

11. Defendant Timothy Dick is a citizen and resident of Illinois, both presently and at the time the State Court Action was commenced. (Compl. ¶ 9.)

12. Defendant Joseph Bonaccorsi is a citizen and resident of Illinois, both presently and at the time the State Court Action was commenced. (Compl. ¶ 10.)

13. Defendant Mark Silverberg is a citizen and resident of Illinois, both presently and at the time the State Court Action was commenced. (Compl. ¶ 11.)

14. Defendant Sean Brynjelsen is a citizen and resident of Illinois, both presently and at the time the State Court Action was commenced. (Compl. ¶ 12.)

15. Defendant Michael Stehn is a citizen and resident of New Jersey, both presently and at the time the State Court Action was commenced. (Compl. ¶ 13.)


16. Plaintiff Fera Pharmaceuticals, LLC seeks to recover damages in excess of \$75,000.00. (See Compl. ¶¶ 61, 65, 66, 70, 71, 77.)

CONCLUSION

17. WHEREFORE, Defendants, pursuant to 28 U.S.C. §§ 1332 and 1441, remove this action in its entirety from the Supreme Court of the State of New York, County of New York to the United States District Court for the Southern District of New York.

Dated: October 15, 2012

Respectfully Submitted,



Jay P. Lefkowitz
John P. Del Monaco
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
lefkowitz@kirkland.com
john.delmonaco@kirkland.com

Douglas J. Kurtenbach (Pro hac vice to be filed)
Nader R. Boulos (Pro hac vice to be filed)
KIRKLAND & ELLIS LLP
300 North LaSalle Drive
Chicago, IL 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
douglas.kurtenbach@kirkland.com
nader.boulos@kirkland.com

Attorneys for Defendants Akorn, Inc., Timothy Dick, Joseph Bonaccorsi, Mark Silverberg, Sean Brynjelsen, and Michael Stehn